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No. 36

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

UNITED STATES OF AMERICA, *Appellant*

v.

FIRST NATIONAL BANK AND TRUST COMPANY OF LEXINGTON, SECURITY TRUST COMPANY and FIRST SECURITY NATIONAL BANK AND TRUST COMPANY OF LEXINGTON

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY

MOTION TO REMAND TO PERMIT THE TAKING OF ADDITIONAL EVIDENCE AND AFFIDAVIT OF LEROY MILES IN SUPPORT THEREOF

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"N" Affidavit of Larry L. Williams in support of Government's motion for a Preliminary Injunction filed in U. S. District Court for the Northern District of California in case styled "United States of America, Plaintiff v. Crocker-Anglo National Bank, Citizens National Bank, and Transamerica Corporation, Defendants" 41-52

"O" Supplemental Affidavit of Larry L. Williams in support of Government's motion for a Preliminary Injunction filed in U. S. District Court for the Northern District of California in case styled "United States of America, Plaintiff v. Crocker-Anglo National Bank, Citizens National Bank, and Transamerica Corporation, Defendants" ..53-57

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UNITED STATES OF AMERICA, *Appellant*

v.

FIRST NATIONAL BANK AND TRUST COMPANY OF LEXINGTON, SECURITY TRUST COMPANY and FIRST SECURITY BANK AND TRUST COMPANY OF LEXINGTON

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY

MOTION TO REMAND TO PERMIT THE TAKING OF ADDITIONAL PROOF

The appellees, First National Bank and Trust Company of Lexington, Security Trust Company and First Security National Bank and Trust Company of Lexington, move this Court to remand this case to district court for the sole and limited purpose of hearing proof

regarding competition between local banks since the trial of this action, and regarding problems of divestiture created by operating the consolidated bank as a single institution since March 1, 1961, to make findings of fact thereon, and to transmit the same to this Court for filing as a supplemental record herein. They further move this Court to defer a decision of the issue of whether there is a violation of Section 1 of the Sherman Act until after said supplemental record is filed herein. The affidavit of LeRoy Miles in support of said motion is attached and filed herewith. A brief in support of said motion is contained in a brief on the merits this day filed herein.

This the 14th day of February, 1964.

GLADNEY HARVILLE
310 First National Bank
Building
Lexington, Kentucky
Attorney for Appellees

Certificate of Service

The undersigned, one of the attorneys of record for the appellees, hereby certifies that five (5) copies of the foregoing motion, together with the affidavit and exhibits attached, were placed in the United States mail in Washington, D. C., postage prepaid, addressed to Solicitor General, Department of Justice, Washington 25, D. C., on this the 14th day of February, 1964.

GLADNEY HARVILLE
310 First National Bank
Building,
Lexington, Kentucky
Attorney for Appellees

IN THE

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OCTOBER TERM, 1963

No. 36

UNITED STATES OF AMERICA, *Appellant*

v.

FIRST NATIONAL BANK AND TRUST COMPANY OF LEXINGTON, SECURITY TRUST COMPANY and FIRST SECURITY NATIONAL BANK AND TRUST COMPANY OF LEXINGTON.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY

AFFIDAVIT OF LEROY MILES IN SUPPORT OF MOTION TO REMAND TO PERMIT THE TAKING OF ADDITIONAL PROOF

The affiant, LeRoy Miles, after being duly sworn, states that the facts hereinafter set forth are true and correct:

1. I am the President of First Security National Bank and Trust Company of Lexington, Lexington, Kentucky ("First Security"). I have occupied this position continuously since First Security was created on the early morning of March 1, 1961, as a result of the consolidation of First National Bank and Trust Company of Lexington ("First National") and Secu-

rity Trust Company ("Security"). Prior to this consolidation I was the President of First National.

2. First Security has operated as a single institution for almost three full years in competition with the four other local banks. The competitive situation between local banks is reflected in their past acts, future plans, and published statements and advertisements of local banks.

I. COMPETITION BETWEEN LOCAL BANKS SINCE TRIAL

3. Exhibit "A", page 17, hereto is a table showing the dollar volume and the percentage of total dollar volume of total resources and total deposits of each local bank as of December 31, 1960, as compared with June 29, 1963. The information is taken from published statements of condition of each bank. This table shows that First Security held 52.70 percent of the total resources of all local banks at the time of the merger. As of June 29, 1963, it had dropped to 50.58 percent, for a total decline of 2.12 percent in two and one-half years. On the deposit side, First Security held 51.94 percent of all deposits of all local banks as of December 31, 1960. As of June 29, 1963, it had dropped to 49.66 percent of all deposits, which represents a decline of 2.28 percent of deposits in two and one-half years. In this period, Central Bank almost doubled its dollar volume of resources and deposits. First Security acquired about 43 percent of the total local growth in resources and about 42 percent of the total local growth in deposits in this period.

4. In its competition with other local banks First Security has not operated under any competitive handicap from this litigation, from the order as to its operations or from any other source during this period.

5. The Annual Report to the Stockholders of Citizens Union National Bank and Trust Company shows that in 1963 its gross earnings were $1,702,262 and its net earnings were $446,459.09 (Exhibit B, page 27). In 1961, that bank had gross earnings of $1,269,929.15 and net earnings of $277,854.25. Thus, in this two years the gross earnings of that bank increased by more than 34 percent and its net earnings increased by more than 67 percent.

6. Immediately following the consolidation, the five local banks had a total of 15 banking offices. Four additional bank offices have been built or plans therefor announced, all by local banks other than First Security.

On October 30, 1963, Bank of Commerce announced that it had purchased a site in downtown Lexington on which it will erect a complete new head office. "This will be the first new complete bank quarters erected in downtown Lexington within the last half century." Adequate off-street parking and a number of drive-in windows will be provided at the new facility. The old location will be retained as an additional branch when the new quarters are completed (Exhibit C, page 29).

Second National Bank had no branches at the time of the consolidation. Recently, it acquired and is now operating its first branch. A second branch site has been approved and purchased by this bank and in all probability the second branch will be in operation during the present year (Exhibit D, page 30).

In November, 1963, Citizens Union National Bank and Trust Company announced that a site for its fifth banking office had been approved and purchased. It plans to erect the largest branch in its system on this

site and work is now under way on the project (Exhibit E, pages 31-32).

Since the trial of this case, Central Bank has completely remodeled and enlarged its banking quarters "to incorporate all the latest features in modern banking buildings." It acquired a building immediately to the rear of its bank, demolished it, and erected a new three story structure to house its accounting and transit departments. It has installed closed circuit television from the tellers to the posting department affording immediate identification of accounts which no other local bank has. It has provided substantial new quarters for its trust and real estate department. It has employed experienced and aggressive trust and real estate personnel and it has been successful in obtaining trust and real estate business. This bank has also installed the only drive-in window service in the downtown area and it has acquired two sizeable areas nearby which its customers can use for parking without cost (Exhibit F, page 33).

During this period First Security has not obtained any additional branch sites and it has not enlarged or rebuilt any of its buildings or facilities.

7. Since the trial of this case, numerous advertisements have been inserted in local papers reflecting the growth and size of local banks as of the dates indicated. Several of these advertisements are attached and marked as indicated:

Newspaper	*Date*	*Exhibit*
The Lexington Leader	7/10/62	G
The Lexington Herald	1/ 8/63	H
The Lexington Leader	1/23/63	I
The Lexington Leader	7/22/63	J
The Lexington Leader	7/29/63	K
The Lexington Herald	1/28/64	L

Exhibit G, page 34, shows that from June 30, 1961, to June 30, 1962, Central Bank experienced a 36 percent increase in its deposits. Exhibit H, page 35, shows that in seven years from December 31, 1955, to December 31, 1962, Central Bank increased in total assets by $19,562,866.88. It almost quintupled its size in this period. Exhibit I, page 36, shows that Central Bank had the greatest percentage growth in deposits of any local bank in the year 1962. Exhibit J, page 37, shows that Central Bank increased $19,994,012.81 in total assets in the six year period from June 30, 1957, to June 30, 1963. In this six years it quadrupled its size. Exhibit K, page 38, shows that from June 30, 1962, to June 30, 1963, Central Bank had the greatest percentage increase in deposits of any local bank. In fact, its increase was nearly three times that of any other local bank. Finally, Exhibit L, page 39, shows that in the calendar year 1963, Central Bank again experienced the greatest percentage increase in deposits of any local bank. Significantly, First Security was last in that regard for the year 1963.

II. CONTINUED GROWTH OF AREA

8. The growth of the area continues at the same rapid pace as before the trial and planning experts foresee a continued industrial growth (Exhibit M, page 40). Since the trial of this action The Trane Company and Westinghouse Air Brake Company have built large local plants. The Trane Company has been operating for several months and Westinghouse Air Brake Company expects to start operations soon. Zoning approval has been secured and plans are under way for one major, regional shopping center in Lexington and efforts are now being made to secure zoning for another.

III. PROBLEMS OF DIVESTITURE

9. The order entered in this case on March 6, 1961, required that "insofar as may be reasonably possible" under applicable banking laws and regulations, "and in accordance with sound banking practices," the merged bank would keep its records in the manner therein prescribed. A good faith effort has been made to comply with this order, but three years of operations as a merged bank have produced countless insoluble problems outside the framework of the order that would arise if a divestiture of the bank is ever attempted.

a. Deposit Accounts

10. The two merging banks held a total of 23,641 checking accounts as of January 1, 1961, two months before the merger. As of December 31, 1963, the merged bank held 27,827 checking accounts. In this three years, the merged bank acquired a minimum of 4,186 new checking accounts that neither bank held at the time of the merger. The two merging banks held 10,059 savings accounts as of January 1, 1961. At year end 1963, the merged bank held 14,110 savings accounts. Thus, the merged bank had a minimum of 4,051 new customers in this field that neither merging bank had prior to the consolidation. The merged bank now has at least 8,237 demand and savings deposit customers who were not customers of either bank prior to the merger. The actual number of new deposit customers is probably a great many more than 8,237, because customers are always changing banks for a variety of reasons. An actual check of each account would have to be made to determine such and this has not been done. The merged bank now holds 41,937 demand and savings deposit accounts. Thus, a mini-

mum of 20 percent of its present depositors were not customers of either pre-existing bank. If a court should order these deposits placed in one or the other of two recreated banks on divestiture it would take the customer only a matter of minutes to move it elsewhere. If divestiture is ordered, it is a reasonable assumption that an appreciable number of all deposit customers, new and old, would leave both banks.

11. In the summer of 1961, the problems of trying to maintain separate bookkeeping and posting departments for demand deposits became so numerous and difficult that all such records of the two banks were combined in one department. They have been kept together continuously since that time. Prior to this, checks written on "First Security" were being sent to the wrong office for payment. Some were returned marked "no account" when the customer had an account in the other office. Time deadlines under local clearing house rules for the return of bad checks could not be met and losses suffered by the bank in not being able to meet these deadlines were mounting. Justifiable customer complaints became so numerous that no other course of action would solve the problem. The deposit accounts that were meshed in 1961 were marked to identify the bank of their origin, but experience shows that this will not solve the problem on any divestiture. If divestiture of a bank has ever been attempted, I have no knowledge of it. If divestiture is attempted here, it is possible that it could produce a "run on the bank" so common during the depression. If divestiture is attempted, the average person would probably have no understanding of the reasons behind it or of what would happen to his money. All that he would understand would be that

his bank is in trouble, and on receipt of that word he would likely hasten to withdraw his money.

b. Lending Field

12. The merged bank holds many more loans than were held by the two merging banks immediately prior to the merger, but the exact number of the increase is unknown. Certainly, many loans that were in effect at the time of the merger have been paid in the interim and many new loans have been made to persons who were not borrowers from either bank at the time of the merger. Since the merger, loans have been made at the Security office, at the First National office, and in all branch offices. However, the total of loans made in any office was not related to the deposit structure of either pre-existing bank. The total loans made were related only to the total deposits of the merged bank because no separate records of deposits of either pre-existing bank have been kept. Assuming on divestiture that it is determined to divide loans and deposits on a pre-determined ratio, sound banking and regulatory authorities would require that the amount of the loans be related to the amount of the deposits set aside to each recreated bank. If a substantial number of depositors choose to leave the bank assigned to them, that bank could easily end up with more loans than deposits. It is very likely that regulatory authorities would close that bank immediately if such occurred. Since the merger, First Security has raised its interest rate on savings deposits to 4 percent. To pay this higher interest rate, the bank has had to heavily concentrate its loans into real estate mortgage loans, a large majority of which are to be amortized over a 15-year period. The two banks,

if separated, simply could not accommodate the large volume of mortgage loans now held by First Security. The loans cannot be called. The problem seems insoluble to me. The merged bank now holds 15 loans where the amount of each loan exceeds $250,000. The total of these loans is slightly less than $6 million. If divestiture is ordered, none of these loans could be assigned to First National because its legal lending limit was $250,000. The deposit structure that presumably would be set aside for Security would not support such a volume of loans of that size.

13. Other factors would be involved in any effort to allocate borrowers and depositors to one or the other of two recreated banks. Since the merger, former Security customers have become accustomed to using former First National branches where more convenient and vice versa. After a lapse of three years, it is likely that convenience will prove more important to them than any pre-existing loyalty to one of the pre-existing banks.

c. Investment Portfolio

14. Records are available to show the securities held in the investment portfolios of the two banks at the time of the merger. However, since that time there has been no separation of the investments held by the two pre-existing banks. Securities held from time to time have been redeemed, converted and reinvested, all for the single merged bank. Again, the 4 percent interest paid on savings has caused a sharp rise in investments in municipal bonds of a long term maturity to get the benefit of their tax exempt status. The merged bank has tripled holdings of these bonds since the merger and it presently holds more than

$10½ million in them. This is more than can be accommodated by the two banks, if separated, and the only course possible would be to sell the excess at a potential substantial loss to shareholders.

d. Reissuance of Stock

15. A total of 191 of the present shareholders owning 24,041 shares in the merged bank were not shareholders in either pre-existing bank. An additional 11,024 shares have been acquired by 143 shareholders who owned stock in one of the pre-existing banks. Therefore, 35,065 shares of a total of 200,000 outstanding shares have changed hands since the merger. At the time of the merger, there were 73 shareholders who owned stock in both pre-existing banks. These shareholders owned 11,521 shares in First National and 7,709 shares in Security. These common shareholders were issued a total of 29,243.2 shares in the merged bank. While the exact number has not been ascertained, it is certain that many of these 29,243.2 shares have changed hands. If divestiture is ordered, a real problem exists as to what stock in which bank a shareholder is to receive for his First Security stock. It might appear simple to trace the stock back to one or the other of the pre-existing banks and issue stock in that bank to the shareholder. If this course is followed and the stock is traced back to a shareholder, who owned stock in both banks, there is no way of determining which pre-existing bank the stock came from. In such an instance, is the shareholder to receive stock in both pre-existing banks, or, if not, in which of the pre-existing banks is he to receive stock?

e. General Books of Account

16. Since the merger the general ledger and account books of the merged bank have been kept without regard to either pre-existing bank. Compliance with regulatory and examining requirements made this necessary. Regulatory authorities have treated the merged bank as a single unit and all periodic reports have been prepared and submitted for a single bank.

f. Earnings

17. Earnings from loans, securities, trust and real estate commissions, rent and other activities have been commingled without regard to either pre-existing bank. It would have been possible to keep trust earnings separate, but this would have been of little help, since the major part of the total earnings of the bank came from loans and investments which could not be segregated or related to either pre-existing bank. Tax returns have been filed and taxes paid on all earnings as a single unit. The problem of an equitable division of net earnings would be most difficult in the event of a divestiture.

g. Trust Accounts

18. In the trust field, the bank has complied with the order of March 6, 1961. However, substantial problems remain. Since the merger, the merged bank has acquired 83 new active accounts in which it holds assets carried at a value of $4,172,550, wherein neither pre-existing bank was designated as the fiduciary. In 48 of these new accounts, wherein it holds assets worth $2,259,050, it is the trustee of inter vivos trusts. Where these trusts are revocable, the settlor would very likely revoke the trusts if they are ordered to a

bank that is unsatisfactory to him on divestiture. Where the trusts are not revocable, a serious problem would seem to exist as to the power of a federal court to appoint a successor trustee. In all instances where the bank is appointed as a fiduciary by a court, the Fayette County Court has appointed it, and it might choose to appoint a third bank as successor trustee. In 21 of the remaining accounts where the bank holds assets valued at $1,162,800 the bank was appointed as the fiduciary by the Fayette County Court, and the same problem appears to exist in those accounts. Eleven of the remaining 14 accounts are revocable agency accounts and it is but reasonable to anticipate that they would be revoked if allotted to a bank that is not satisfactory to the creator.

h. Personnel Problems

19. For some time, the merged bank has had only one proof and transit department, one bookkeeping and posting department and one general book and auditing department. The separate personnel of the two pre-existing banks have been combined in single departments. During this period, the turnover in personnel in these departments has been rather heavy. It is largely old First National personnel that remain, and if divestiture is ordered Security would have to re-establish these three departments without adequate personnel. Other serious personnel problems would be faced. First Security has a balanced staff with management succession well provided for, but the same would not be true of Security on divestiture. Several of those who were formerly key management personnel of Security have been lost since the merger, and if an effort should be made to reestablish Security

a sizeable gap in age and experience would exist between Mr. Dabney, its former president, and the next in line. Mr. Dabney is now past the normal retirement age. Consequently, the smaller bank would be faced with a real and pressing problem in management personnel on divestiture.

i. Public Confidence

20. Probably the most valuable asset of any bank is public confidence. Many years of service, hard work and personal contacts are necessary to build it up and keep it. It is doubtful that anyone can accurately predict the ultimate effect of a divestiture on this vital element. There would doubtless be substantial damage to both re-created banks. However, in the three years that the merged bank has operated the smaller bank has lost its separate identity and it would seem but reasonable that it would suffer the greatest damage by far in this respect.

j. Public Interest

21. Other than what is stated above, it is difficult at this time to give any estimate of the injury to the public interest that would result. Efforts to disentangle the two would jeopardize the borrowing needs of the community without question. The difficulties that lie in the way of Security becoming a sound, solid, aggressive bank again seem to be myriad.

22. Two affidavits of Hon. Larry L. Williams, one of the attorneys for the Government in this case, are attached, marked Exhibits "N" and "O", respectively. These affidavits were filed in Civil Action No. 41,808 in the United States District Court for the Northern District of California, in a case styled

"United States of America, Plaintiff, v. Crocker-Anglo National Bank, Citizens National Bank, and Transamerica Corporation." In these affidavits are listed many of the problems that would face this bank if divestiture is ever attempted.

WITNESS my signature, on this the 14th day of February, 1964.

LEROY MILES

DISTRICT OF COLUMBIA, ss:

Subscribed and sworn to before me by LeRoy Miles on this the 14th day of February, 1964.

/s/ ROBERT H. PRICE
Notary Public, District of Columbia
(Seal) My Commission Expires May 15, 1966

EXHIBIT "A"

COMPARISON OF DOLLAR AMOUNTS AND PERCENTAGES OF ALL LEXINGTON BANKS PER PUBLISHED STATEMENTS

DECEMBER 31, 1960 AND JUNE 29, 1963

	DEC. 31, 1960		JUNE 29, 1963		INCREASE	
TOTAL RESOURCES	AMOUNT	% of TOTAL	AMOUNT	% of TOTAL	AMOUNT	% INCREASE
FIRST NATIONAL	65,068,618	39.83				
SECURITY TRUST	21,032,612	12.87				
FIRST SECURITY			107,886,519			
SUB-TOTAL	86,101,230	52.70	107,886,519	50.58	21,785,289	25.30
CITIZENS	27,876,217	17.06	37,352,919	17.51	9,476,702	33.99
COMMERCE	21,230,398	13.00	25,245,730	11.84	4,015,332	18.91
SECOND NATIONAL	13,239,634	8.10	16,019,569	7.51	2,779,935	21.00
CENTRAL	14,930,405	9.14	26,781,088	12.56	11,850,683	79.37
GRAND TOTAL	163,377,884	100%	213,285,825	100%	49,907,941	30.55
TOTAL DEPOSITS						
FIRST NATIONAL	58,673,480	40.06				
SECURITY TRUST	17,401,927	11.88				
FIRST SECURITY			96,423,632			
SUB-TOTAL	76,075,407	51.94	96,423,632	49.66	20,348,225	26.75
CITIZENS	24,568,642	16.78	33,818,411	17.42	9,249,769	37.65
COMMERCE	19,500,473	13.32	23,407,767	12.06	3,907,294	20.04
SECOND NATIONAL	12,157,027	8.30	14,871,692	7.66	2,714,665	22.33
CENTRAL	14,143,795	9.66	25,628,862	13.20	11,485,067	81.20
GRAND TOTAL	146,445,344	100%	194,150,364	100%	47,705,020	32.58

EXHIBIT "B"

Fifty-Seventh Annual Report

To Stockholders

Citizens Union National Bank & Trust Company

Lexington, Kentucky

Annual Meeting — January 21, 1964

MEMBER FEDERAL RESERVE SYSTEM

MEMBER FEDERAL DEPOSIT INSURANCE CORPORATION

Directors

A. G. Mainous, Chairman
O. A. Bakhaus
Ben P. Bransom
J. W. Bratcher
D. J. Burke
Ernest S. Clarke
Sterling D, Coke
Leslie Combs II
George B. Dunn
James A. Fraser
J. Howard King
Arch G. Mainous, Jr.
Frank L. McCarthy
Charles C. Patrick, Jr.
Zellner Peal
Harold Redd
H. C. Robinson
Paul Slaton
Sam P. Strother
William L. Wallace

Officers

A. G. Mainous, Chairman of the Board
Ernest S. Clarke, President
J. W. Bratcher, Vice President & Cashier

Commercial Banking

Ben P. Bransom, Vice Pres.
Walter Brock,
Assistant Vice President
Arch G. Mainous, Jr.,
Vice President
William E. Farra,
Assistant Vice President
Emily Crooks, Asst. Cashier
Gladys Karnes,
Assistant Cashier
Mamie T. Sanders,
Assistant Cashier

Trust Department

Paul Slaton,
Vice Pres. & Trust Officer
Harry D. Dodson,
Assistant Trust Officer

Consumer Loans

E. B. Jordan,
Vice President
Gordon N. Smith,
Assistant Cashier

Drive-In Branches

1100 Winchester Road
Paul Bullock,
Assistant Vice President

1330 Harrodsburg Road
Robert C. Jarvis, Manager

1481 Leestown Road
Elmer Stivers, Asst. Cashier

2260 Nicholasville Road
(Opening Planned for
February 1964)

Services

Commercial Banking

Checking Accounts
Savings Accounts
Commercial Loans
Real Estate Loans
Installment Loans
Collections
All Correspondent Bank Facilities
Travelers Cheques
Night Depository
Five Convenient Locations

Trust

Executor or Administrator
Trustee Under Wills or Agreements
Guardian for Infants and Committee for Incompetents
Fiscal Agent
Trustee for Bond Issues
Stock Transfer Agent and Registrar

Safe Deposit Boxes

201 West Short Street
1100 Winchester Road
1330 Harrodsburg Road

Fifty-Seventh Annual Report to Stockholders

The year just completed was an excellent one for us, producing larger total deposits, more loans and increased capital funds. Earnings were satisfactory despite the continued increase in interest paid on time and savings deposits and other operating expenses.

Business activity in Fayette County improved throughout the year and ended on a high level. Approximately 3,000 more people were engaged in non-agricultural jobs than a year before. Department store sales through November increased 5%. Banking activity, as measured by both clearings and debits, increased by more than 10%. This increase was achieved although there was a reduction in the value of building permits issued of nearly 10%, and there were five fewer days of tobacco sales of the 1963 crop than a year ago. It is interesting that the number of permits issued for apartment units increased 214 from 689 to 903, and the value by $637,000. from $4,765,000. to $5,402,000. There was great confusion during the latter part of the year over the interpretation and enforcement of the Sunday closing law, and it is hoped this will be clarified shortly.

Total deposits in Lexington banks increased to a new high of $218,196,000., an increase of $27,908,000. or 15%. Contrary to 1962 a substantial portion of the increase was in demand deposits. These deposits accounted for 59% of the increase and savings and time deposits for only 41%, whereas in 1962 the increases were 16% and 66% respectively. It is interesting to note that time and savings deposits have increased 63% in the past two years. Loans increased $12,962,000. or 13%, and utilized 47% of the increase in deposits compared with 87% the previous year.

A percentage comparison of deposits and loans of Lexington banks with a year ago, and important balance sheet

ratios based on call reports as of December 20, 1963, according to our calculations, are as follows:

	Citizens Union	First Security	Bank of Commerce	Central Bank	Second National
Deposits	17	16	8	13	14
Loans	19	10	19	0	28
Ratios					
Capital Funds to					
Deposits	9	9	7	4	8
Loans	18	15	12	9	17
Investments	21	30	35	8	24
Loans & Investments	10	10	9	4	10
Risk Assets	14	11	11	9	12
Cash and Governments					
To Deposits	52	32	43	62	41
Loans to Deposits	48	57	57	41	46

Our comparatively favorable ratios, particularly the very important ones of capital funds to deposits and to risk assets, are a source of gratification to us. The latter is the most favorable in Lexington, and this strong capital position is evidence of the determination of your directors to enable this Bank to meet its responsibility to depositors.

Comparative Statement of Condition

Resources	Dec. 31, 1963	Dec. 31, 1962
Cash and Due from Banks	$ 6,915,006.92	$ 5,515,218.00
U.S. Government Bonds	11,399,347.30	11,935,535.68
Municipal Bonds	3,618,448.70	2,918,974.21
Total Bonds	15,017,796.00	14,854,509.89
Federal Reserve Bank Stock	81,000.00	75,000.00
Real Estate Loans	5,751,390.42	3,939,615.65
Commercial Loans	6,500,079.87	5,806,001.97
Collateral Loans	2,401,196.68	2,033,954.17
Consumer Loans	3,865,059.09	3,256,123.64
Total Loans	18,517,726.06	15,035,695.43
Banking Houses	473,850.12	386,215.85
Furniture & Fixtures	7,926.52	6,083.48
Other Assets	2,022.85	21,328.14
Totals	$41,015,328.47	$35,894,050.79

Liabilities and Capital

Capital Stock	$ 1,000,000.00	$ 1,000,000.00
Surplus	1,700,000.00	1,500,000.00
Undivided Profits	479,440.36	393,667.74
Total Capital	3,179,440.36	2,893,667.74
Bad Debt Reserve	295,373.61	234,434.57
Securities Reserve	220,489.69	343,796.86
Reserve for Taxes, etc.	130,729.61	285,327.67
Interest Collected Not Earned	433,655.21	350,644.03
Total Reserves	1,080,248.12	1,214,203.13
Demand Deposits	22,009,477.32	18,935,878.54
Savings Deposits	10,473,908.02	9,141,606.38
U.S. Government	656,301.80	399,956.09
State and Political	1,426,475.43	1,610,685.83
Banks	1,774,007.85	1,416,604.03
Other Deposits	414,145.57	263,325.05
Total Deposits	36,754,315.99	31,768,055.92
Other Liabilities	1,324.00	18,124.00
Total Liabilities and Capital	$41,015,328.47	$35,894,050.79

Our loans increased $3,482,000. with Real Estate loans accounting for $1,812,000. or 52% of the increase, Commercial 20%, Consumer 17% and Collateral 11%. Approximately one-half of the increase in Real Estate loans is of a temporary nature, but with these included, such loans amount to only 55% of our Time and Savings deposits.

At the year-end the average maturity of bonds owned is as follows:

U.S. Government	2 years 9 months
State and Municipal	8 years 4 months
Average of All Bonds	4 years 1 month

During the year we reduced the average maturity of our Government bonds by six months and increased our Municipal bonds by eight months. The average maturity of all bonds decreased one month, with Municipals amounting to 24% of total investments, compared with 20% a year ago, and Governments amounting to 76% compared with 80%.

Gross operating income was $1,702,262., an increase of $178,633. over last year. Expenses increased $135,468., with $64,761. of this increase being interest paid on Time and Savings Deposits. As a result of the shifting of our investment position we realized losses and reduced our securities reserve $123,000. This reduced our income tax liability and, as we had over-accrued for this liability in prior years, our net earnings after taxes increased $159,722. over last year. If approved by you, a 20% stock dividend will be paid in February, 1964 by transfer of $200,000. from Undivided Profits and capital stock will be increased to $1,200,000. It is your directors' intention to pay $1.00 per share in dividends on the increased amount of stock, which will increase cash dividends from $100,000. to $120,000.

Gross income earned on average total resources amounted to 4.6%, on loans 6%, on government bonds 3.4% and on municipal bonds 3%.

TEN YEAR COMPARATIVE RECORD
(In Thousands)

Dec. 31	Resources	Deposits	Loans	Capital Funds*
1963	$41015	$36754	$18518	$3695
1962	35894	31768	15036	3472
1961	33396	29682	14224	3196
1960	28298	24569	14457	3056
1959	28655	25512	13263	2728
1958	27119	24125	11723	2835
1957	26071	23347	11225	2492
1956	23971	21614	9820	2357
1955	23989	21729	10375	2260
1954	23124	20828	8474	2296

* Includes Valuation Reserves

The volume of business transacted at our three branch offices increased over the previous year. In December we purchased the building at 2260 Nicholasville Road in the Zandale Shopping Center. Remodeling is now under way

and we expect to open this very important addition to our branches next month.

Condensed Comparison of Earnings

	For Year Ended 1963	1962
Operating Income:		
Interest on Loans	$ 953,141.57	$ 898,587.45
Interest and Dividends on Securities	497,490.14	385,831.94
Other Operating Income	251,630.10	239,209.68
Total	1,702,261.81	1,523,629.07
Operating Expenses	1,118,497.04	983,029.23
Net Operating Earnings Before Taxes	583,764.77	540,599.84
Less: Income Taxes	134,319.91	253,562.47
Other Charges, Net	2,985.77	300.05
Net Operating Earnings	$ 446,459.09	$ 286,737.32

Reconcilement of Capital, Surplus and Undivided Profits

Capital, Surplus and Undivided Profits At Beginning of Year	$2,893,667.74	$2,725,873.84
Net Operating Earnings	446,459.09	286,737.32
Total	3,340,126.83	3,012,611.16
Less: Transfer to Reserve for Bad Debts	60,686.47	18,943.42
Dividends	100,000.00	100,000.00
Capital, Surplus and Undivided Profits	$3,179,440.36	$2,893,667.74
Book Value of Stock	$ 31.79	$ 28.94
Income Taxes Paid Per Share	1.34	2.54
Net Operating Earnings Per Share	4.46	2.87
Dividends Paid Per Share	1.00	1.00

We could take greater pride in the results of the year if we had not recently lost two of our valuable and most beloved directors: Clifton L. Thompson, Jr. in August 1963 and Sam H. Roberts in January 1964. They will both be greatly missed by this Bank, and by all fortunate enough to have known them well. A. G. Mainous is seriously ill at the present time and we are all fervently hoping for his early and complete recovery.

We are most grateful for your support, the wise counsel of your directors, and the dedicated efforts of all the members of our staff.

Ernest S. Clarke
President

EXHIBIT "C"

Bank Of Commerce Plans New Building

Firm Buys Site On East Main From McKinley

Bank of Commerce will build a new home at 318 East Main Street.

The bank announced today that it had bought the property, fronting 203 feet on Main and running back to the Chesapeake & Ohio Railroad property, from Dixie McKinley.

No purchase price and no cost estimate on the new office building were given.

The property is occupied by a car rental agency.

The bank plans to put up a two-story building containing about 30,000 square feet of office space, with adequate off-street parking and "a number" of drive-in windows.

Plans are being drawn and the new offices are to be under construction early in 1964. When the building is finished, all departments in the bank's quarters at Main Street and Cheapside will be moved and the old location will be turned into a branch bank.

A statement said:

"This will be the first new complete bank quarters erected in downtown Lexington within the last half century, and the bank in erecting these quarters affirms its faith in the growth and future expansion of downtown Lexington and the whole community . . . . In addition to providing additional services and conveniences for its customers, (the bank) will meet a need for modern banking services to an ever-growing and expanding Lexington and its environs."

On Sept. 12, McKinley announced he had bought a tract on East Main Street, opposite Deweese Street, for $190,000.

The property, bought by McKinley, an automobile dealer, from the Manning estate, for many years housed Armour & Co., a wholesale meat firm.

The tract is known as the old

Bank

(Continued From Page 1)

Lexington Brewery property, a title left over from pre-prohibition days. After prohibition it was the home of a beer distributor and later of an ice cream manufacturer.

Wells on the property were used to supplement the city's water supplies during a major drought during the 1930s.

The Bank of Commerce already operates two branches at 718 Euclid Avenue and at 1975 Harrodsburg Road.

As of the middle of 1963 the bank, according to its condensed statement, had:

Resources—Cash on hand and due from banks, $3,589,484.37; United States Government Securities, $8,252,141.26; other bonds, stocks and securities, $907,112.98; stock in Federal Reserve Bank, $42,000; loans and discounts, $14,430,125.26; banking houses, $325,410.72, and furniture and fixtures, $79,758.74.

Liabilities — Capital stock, $400,000; surplus fund, $1,000,000; undivided profits, $413,962.59; reserves, $280,303.30; dividend, $24,000, and deposits, $23,407,767.44.

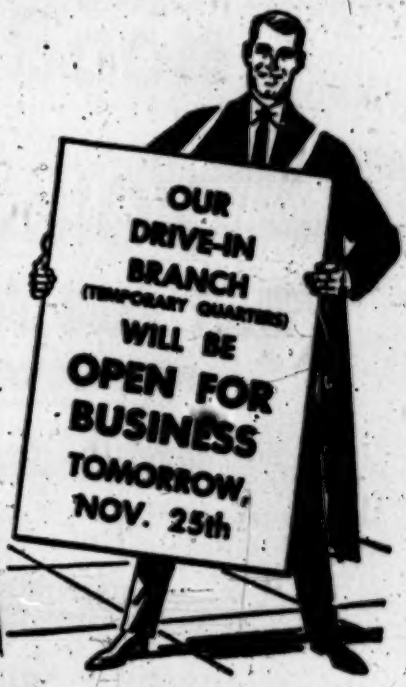
Both resources and liabilities totaled $25,906,033.33.

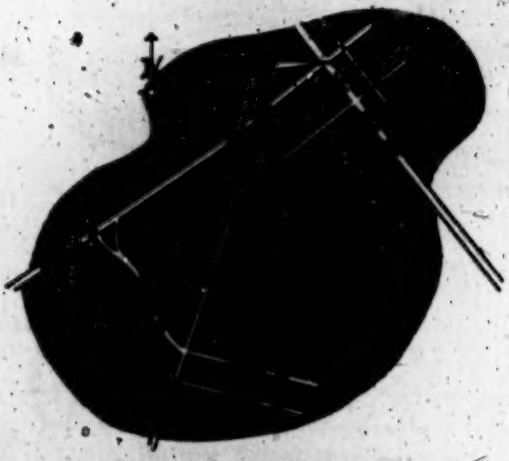
Officers of the bank are Robert C. Stilz, president; W. M. Ellis, executive vice president and trust officer; C. V. Boggs, vice president; George A. Vaughn, vice president, and W. F. Brown Jr., cashier.

NOW! 2 SECOND NATIONAL BANK & TRUST CO.

Locations to Serve You....

ANOTHER SECOND NATIONAL CUSTOMER-CONVENIENCE!





COMPLETE FINANCIAL AND BANK SERVICES* NOW AT BOTH LOCATIONS!

In keeping with the policy of Second National to serve its customers in the best, most efficient manner possible, Second National Bank & Trust Co. will begin operation of its new drive-in location (temporary quarters across from Zandale Shopping Center) tomorrow. The Second National branch will offer all banking services and facilities* also offered at the Cheapside location.

*EXCEPTING NIGHT DEPOSITORY AND SAFETY DEPOSITS BOXES AT TEMPORARY DRIVE-IN BRANCH.

TELEPHONE 255-5554

MEMBER F.D.I.C. AND FEDERAL RESERVE SYSTEM

NOW 2 LOCATIONS!

DOWNTOWN LOCATION:
123 CHEAPSIDE

DRIVE-IN BRANCH:
2225 NICHOLASVILLE RD.

EXHIBIT "E"

Coming Soon

another*

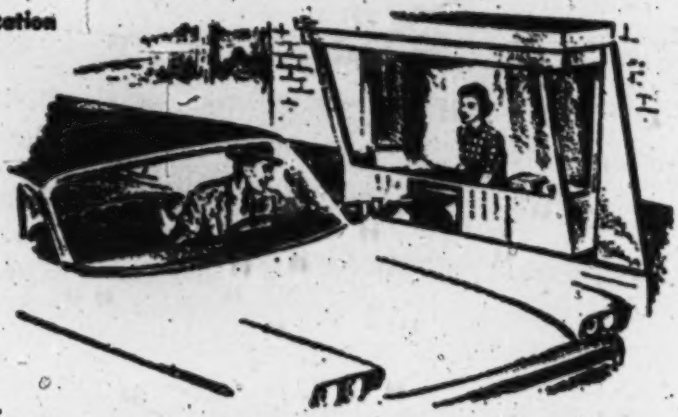
CITIZENS UNION

Complete Drive-In Branch Bank Facility

NICHOLASVILLE ROAD BRANCH

In Zandale Shopping Center

*Our Fourth Branch Location



CITIZENS UNION NATIONAL BANK AND TRUST CO.

Member Federal Deposit Insurance Corporation
Member Federal Reserve System

201 West Short Street
Lexington's Best Known Banking Center

And Our Branch Banks at

1230 Harrodsburg Road **1100 Winchester Road** **1481 Leestown Road**

EXHIBIT "E"

Lexington, Kentucky, Saturday Afternoon, November 9, 1963

Lounge Is Sold For Branch Bank

The Suburban Lounge, Zandale Shopping Center, has been sold to Citizens Union National Bank and Trust Co. for a branch bank.

The cocktail lounge was sold Friday for $67,500. The owners, Mr. and Mrs. Fred Singleton, said they will build a new Suburban Lounge in another location, yet to be selected. The new lounge, they said, will be larger and will include a steak house and night club entertainment.

The lounge will close Dec. 1, but spokesmen said work will begin immediately to convert the lounge to a bank. The lounge will be remodeled and enlarged and will probably be the largest branch in the Citizen's Union system, a spokesman said.

Central Bank Now In Middle Of Another Remodeling Project

Firm Is First To Install Ban MAR 11 1962
Drive-In Facilities Downtown

One of Lexington's landmarks—is in the process of being remodeled and completely renovated for the second time in 50 years.

...e original building dates back ...s 1850 when it was built as an investment by Sally McClellan, wife of Byron McClellan, horseman of the 1800's whose stable was many famous races including the Kentucky Derby, the Belmont Stakes, and the Suburban Handicap.

The building was originally a five story structure; the two upper stories being added in 1905. Lee Cassells Drug Store occupied the corner location now serving as main lobby for the bank. Named the Central Exchange Bank and chartered in 1903, it now has become Central Bank & Trust Co.

The bank was started by a group headed by Harry Moore, who was elected first president of the bank. The bank was purchased by Garvice D. Kincaid in 1946.

Since that time its growth has been phenomenal. Assets at the time of purchase by Kincaid were less than $700,000. Assets on Dec. 31, 1961 were in excess of $18,000,000. The remodeled structure will incorporate all the latest features in modern banking and buildings.

As a prelude to the remodeling, a building owned by the Barkley estate, immediately to the rear of the Central Bank building, was demolished and a new three-story structure erected by Kincaid to house the accounting and transit departments of the bank. That structure officially was occupied by bank personnel on Thursday, March 1, 1962.

Installation of the bank's new drive-in facilities will be completed in the new structure. Two drive-in lanes will be provided, one for deposits and withdrawals and the other for safe deposit customers. Both lanes will be equipped with pneumatic tube systems.

The new structure will also house the bank's trust department, safe deposit department and real estate department. These departments actually cover the area formerly occupied by the original Central Exchange Bank.

Officers area will be to the rear of the main banking floor. New large officers desks and office furniture will be of Georgian style.

The officers' area will be carpeted completely and officers' desks will be spaced conveniently so that normal conversation between customer and officer can be conducted without disturbing customers at other officers' desks. Two conference rooms will be comfortably furnished for those who require complete privacy in the conduct of their business.

Two doors east of the bank on property previously occupied by the Standard Furniture Co., a forty-foot wide, two-window drive-in and walk-up facility is under construction. Entry will be from Short Street with exit on Church Street. This will be the first completely drive-in facility for a downtown bank. The two tellers windows will be in direct contact with the main bank tellers by a pneumatic tube system.

The drive-in area will be completely blacktopped and will be landscaped with the addition of appropriately spaced planters. The entire area will add to the beautification of downtown Lexington.

A parking lot on Short Street, one-half block from the bank will accommodate 18 automobiles. Customers who wish to conduct business within the bank will be entitled to use this facility without charge for a period of 30 minutes. Designing, decorating and planning of the entire project is being done by William Clements Associates, and bounded on the east by the Rudig Paint Co. building, have been removed.

In addition, a section to the rear of the building elevator which now houses the air conditioning equipment will be removed to provide more customer lobby space. The air conditioning system will be moved to the roof of the bank building. A total of 800 additional square feet of floor space will be acquired by these moves.

The interior of the main banking structure will be done in American walnut; color motif is green and gold. Carpets will be in emerald green. New ceiling grid lighting will spread evenly throughout the main banking floor.

Lighting fixtures will include large brass beandeliers and brass wall sconces. These will reflect in excess of 120 candlepower of light per square foot of floor space. Draperies will be of green and upholstering of office furniture will be of antique gold. The blending of soft color tones compliments the spacious lobby lending a gracious atmosphere not generally found in banks today, a bank official said.

There will be a plenum type acoustical ceiling which actually acts as a lobbywide heating and air conditioning register. This automatically eliminates uncomfortable in the ceiling and treated air will be distributed evenly throughout the whole banking area. The customer lobby will include a spacious waiting area with modern furniture for maximum customer comfort. Tellers cages will be of walnut paneling and attractive Kentucky marble. The floor of the tellers area will [illegible]

...ated for the second time in 10 years.

...e original building dates back to 1818 when it was built as an investment by Sally McClellan, wife of Byron McClellan, horseman of the 1807's whose stable was many famous races including the Kentucky Derby, the Belmont Stakes, and the Saratoga Handicap.

The building was originally a five story structure; the two upper stories being added in 1858. Lee Cassells Drug Store occupied the corner location now serving as main lobby for the bank. Named the Central Exchange Bank and chartered in 1858, it now has become Central Bank & Trust Co.

The bank was started by a group headed by Henry Moore, who was elected first president of the bank. The first type was chosen by Garvice D. Kincaid in 1948.

Since that time its growth has been phenomenal. Assets at the time of purchase by Kincaid were less than $700,000. Assets on Dec. 31, 1951 were in excess of $18,000,000. The remodeled structure will incorporate all the latest features in modern banking and buildings.

As a prelude to the remodeling, a building owned by the Barbey estate, immediately to the rear of the Central Bank building, was demolished and a new three-story structure erected by Kincaid to house the accounting and transit departments of the bank. That structure officially was occupied by bank personnel on Thursday, March 1, 1951.

This new section, connected to the main bank building by two spacious doorways covers more than 8,000 square feet of floor space consisting of three stories and a lower level. Some of the most modern equipment in use by banks today now is housed in this new structure. Three new electronic posting machines have replaced seven conventional type posting machines. The tellers cages will be in touch with the accounting department by closed circuit television allowing immediate identification of accounts, thereby speeding up service to the customer.

The first floor will include the general bookkeeping department and the accounting section for the [illegible] for teller comfort and the reduction of excessive noise.

Larger Departments

Each teller's cage will include an individual coin vault for security reasons and primarily eliminates the necessity of tellers leaving their stations. The low, handsomely designed tellers windows will afford excellent communication between teller and customer. To the right of the customers lobby will be found, the enlarged trust department, and the real Central Exchange Bank.

Officers area will be to the rear of the main banking floor. New large officers desks and other furniture will be of Georgian style.

The officers' area will be carpeted completely and officers' desks will be spaced conveniently so that normal conversation between customers and officers may be conducted without disturbing customers at other officers' desks. Two conference rooms will be comfortably furnished for those who require complete privacy in the conduct of their business.

Two doors just of the bank on property previously occupied by the Stanberg Furniture Co., a forty-foot wide, two-window drive-in and walk-up facility is under construction. Entry will be from Short Street with exit on Church Street. This will be the first walk only drive-in facility for a downtown bank. The two offices windows will be in direct contact with the main bank tellers by a pneumatic tube system.

The drive-in area will be completely blacktopped and will be landscaped with the addition of appropriately spaced planters. The entire area will add to the beautification of downtown Lexington.

A parking lot on Short Street, one-half block from the bank will accommodate 50 automobiles. Customers who wish to conduct business within the bank will be entitled to use this facility without charge for a period of 30 minutes. Designing, decorating and planning of the entire project is being done by William Clements Associates and other firms represented here.

The second floor will include the transit and posting departments. The third floor houses the mailing room and all photographic equipment.

Each check, deposit slip, and customer account statement now is microfilmed to increase ease in filing records and to reduce storage space. The lower level of the building will be used for the comfort of the bank staff.

An employees recreation room of more than 1,000 square feet will be paneled in walnut and includes modern kitchen equipment, comfortable tables and chairs and a varied menu. An attendant will be on hand to prepare and serve employees.

Remodeled Interior

The interior of the main bank structure will be renovated completely and will include in excess of 5,000 square feet of floor space. Of this, more than 1,000 square feet will be carpeted.

The tellers cages now to the right side on entering the front of the bank will be shifted to the left side of the lobby. All windows on the Upper Street side of the building will be removed and replaced by a solid exterior wall. Walls to the rear of Younger

In addition, a section to the rear of the building elevator which now houses the air conditioning equipment will be removed to provide more customer lobby space. The air conditioning system will be moved to the roof of the bank building. A total of 800 additional square feet of floor space will be acquired by these moves.

The interior of the main banking structure will be done in American walnut; color motif is green and gold. Carpets will be in emerald green. New ceiling grid lighting will spread evenly throughout the main banking floor.

Lighting fixtures will include large brass bracketiers and brass wall sconces. These will reflect in excess of 120 candlepower of light per square foot of floor space. Draperies will be of green and upholstering of office furniture will be of antique gold. The blending of soft color tones compliments the spacious lobby lending a gracious atmosphere not generally found in banks today, a bank official said.

There will be a plenum type acoustical ceiling which actually acts as a lobbywide heating and air conditioning register. This automatically eliminates condensation in the ceiling and treated air will be distributed evenly throughout the whole banking area. The customer lobby will include a spacious waiting area with modern furniture for maximum customer comfort. Tellers cages will be of walnut paneling and attractive Kentucky marble. The floor of the tellers area will include rubber foam laminated to vinyl

the Campbell House and the dining rooms of the Phoenix and Lafayette hotels, to be opened soon.

Garvice D. Kincaid, chairman of the board of Central Bank & Trust Co. stated, "This is the culmination of a long range plan to upgrade and update every feature and function of Central Bank & Trust Co. More than 25 local contractors employing some 150 technicians and laborers are working on this project. When completed the forepart of May we will have the most modern bank in the Lexington area incorporating every conceivable banking service."

William Clements of William Clements Associates stated that the exterior remodeling will not be completed until the latter part of June. His firm also is engaged in remodeling other Kincaid banks in the area which includes the Peoples Commercial Bank at Winchester and an entirely new bank structure at Danville.

EXHIBIT "G"

GROWTH Thru SERVICE

36% INCREASE IN DEPOSITS

YEAR AFTER YEAR THE GREATEST GROWTH OF ANY KENTUCKY BANK

★ COMPARATIVE STATEMENT ★

ASSETS

	6/30/61	6/30/62
Cash	$ 2,086,103.76	$ 4,193,753.95
U.S. Bonds	3,939,160.30	3,247,361.02
Other Bonds	28,800.00	30,000.00
Loans and Discounts	7,182,581.63	7,451,916.95
Furniture & Fixtures	85,373.16	180,585.26
Real Estate	293,041.97	174,655.26
TOTAL ASSETS	$13,628,289.52	$17,268,272.44

LIABILITIES

Deposits	$11,709,186.69	$14,828,574.07
Capital	150,000.00	600,000.00
Surplus	400,000.00	600,000.00
Profits and Reserves	267,102.83	693,836.37
TOTAL LIABILITIES	$13,628,289.52	$17,268,272.44

★ **4% SAVINGS INTEREST**

Central Bank and Trust Company pays 4% interest on all savings. Your money is insured up to $10,000 by the Federal Deposit Insurance Corporation.

★ **NO CHECK CHARGE**

Only with a Central Bank checking account can you write as many checks as you like at NO CHARGE when a $100 minimum balance is maintained.

★ **4% AUTO LOANS**

Central Bank offers the lowest interest available for new car loans. 4% per year and 36 months to pay. Similar low rates available for older model cars.

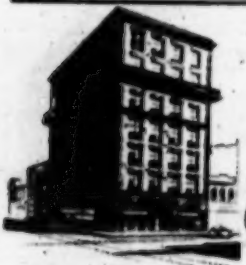
★ **ALL TYPES OF LOANS**

With a low cost Central Bank loan you get the lowest interest rates available and terms are made to suit your income. You do not have to be a depositor to use this service.

Visit the new Downtown Drive-In. . . .
On West Short between Upper & Limestone

OPEN DAILY 7:30 'til 6

Saturday, 7:30 'til Noon



large enough to serve you . . .

small enough to know you.

Central

CORNER SHORT AND UPPER

MEMBER F.D.I.C.

PROGRESS

CENTRAL BANK and TRUST CO. CONTINUES ITS GROWTH....

$19,562,866.88

IN ONLY SEVEN YEARS

COMPARATIVE STATEMENT OF CONDITION
December 31, 1955, 1962

ASSETS	December 31, 1955	December 31, 1962
Cash	$1,264,539.26	$ 9,872,726.95
U. S. Bonds	944,830.80	5,471,324.28
Other Bonds	238,753.26	177,289.10
Loans and Discounts	3,048,817.18	9,622,322.77
Furniture and Fixtures	44,924.92	200,959.10
Real Estate	—0—	—0—
TOTAL ASSETS	$5,641,865.42	$25,394,722.30
LIABILITIES		
Deposits	$5,085,959.37	$24,044,490.18
Capital	100,000.00	400,000.00
Surplus	200,000.00	400,000.00
Profits and Reserves	255,906.05	300,232.12
TOTAL LIABILITIES	$5,641,865.42	$25,394,722.30

We wish to take this opportunity to thank our customers for their continued trust in the employees, officers and directors of Central Bank and Trust Company. Without the confidence of these friends, both old and new, our outstanding record of growth would not have been possible. In order to give you better service in 1962, these things were accomplished . . . a remodeled building for more pleasant banking . . . drive-in facilities for conventional banking at hours to suit you . . . electronic bookkeeping for fast, accurate accounting . . . new departments, including Trust and Real Estate for added services. In 1963, you can rest assured that Central Bank and Trust Company will exert every effort to continue to improve our services and facilities in every possible way.

We have "Customers' Hours . . . not Bankers' Hours"

Central

Main Bank Open Daily 9 to 4

Drive-In Open Daily 7:30 to 6

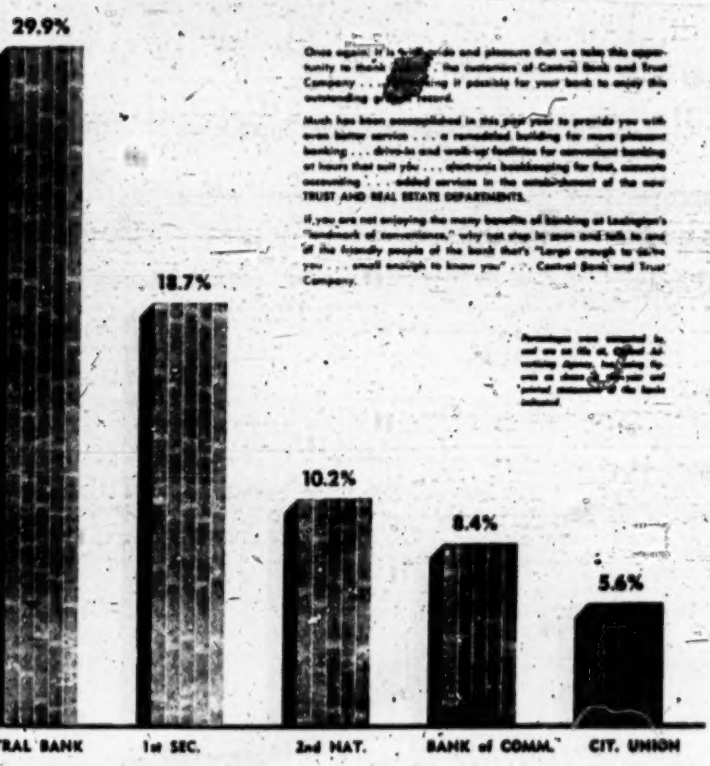
Corner Short and Upper — Member F. D. I. C. — Both Offices Close At Noon On Saturday

EXHIBIT "T"

The Lexington Leader, Wednesday, Jan. 23, 1963

hanks Again...

FOR THE GREATEST PER CENT OF GROWTH IN DEPOSITS OF ANY LEXINGTON BANK DURING 1962



Once again, it is a pride and pleasure that we take this opportunity to thank [redacted] the customers of Central Bank and Trust Company . . . [redacted] it possible for your bank to enjoy this outstanding growth record.

Much has been accomplished in this past year to provide you with even better service . . . a remodeled building for more pleasant banking . . . drive-in and walk-up facilities for convenient banking at hours that suit you . . . electronic bookkeeping for fast, accurate accounting . . . added services in the establishment of the new TRUST AND REAL ESTATE DEPARTMENTS.

If you are not enjoying the many benefits of banking at Lexington's "landmark of convenience," why not step in soon and talk to one of the friendly people of the bank that's "Large enough to serve you . . . small enough to know you" . . . Central Bank and Trust Company.

[redacted]

Central

We have "Customers' Hours . . . not Bankers' Hours"

Main Bank Open Daily 9 to 4

Drive-In Open Daily 7:30 to 6

[redacted] Union

Member F. D. I. C.

Both Offices Close At Noon On Saturday

EXHIBIT "J"

GROWING

GROWING

GROWING

GROWING

$19,994,012.81

GAIN IN ASSETS

IN ONLY 6 YEARS

We wish to take this opportunity to express our sincere thanks to our customers whose confidence in the employees, officers and directors is expressed by this outstanding growth record. It is the purpose of Central Bank and Trust Company to give to the people of Lexington and Fayette County the finest banking services available anywhere. We pledge to continue to improve and expand these services at every opportunity.

COMPARATIVE STATEMENT OF CONDITION

June 30, 1957; 1963

ASSETS	June 30, 1957	June 30, 1963
Cash	$1,997,779.95	$12,635,890.29
U. S. Bonds	1,495,731.03	4,436,256.28
Other Bonds	238,753.26	288,182.35
Loans and Discounts	2,105,909.26	8,280,611.73
Furniture and Fixtures	30,098.49	223,334.35
Real Estate	- 0 -	- 0 -
TOTAL ASSETS	$6,866,262.09	$26,860,274.90
LIABILITIES		
Deposits	$6,300,722.46	$23,632,861.70
Capital	150,000.00	400,000.00
Surplus	150,000.00	400,000.00
Profits and Reserves	265,539.63	431,413.20
TOTAL LIABILITIES	$6,866,262.09	$26,860,274.90

ALL DEPOSITS INSURED TO $10,000.00 BY THE FEDERAL DEPOSIT INSURANCE CORPORATION

Central

CORNER SHORT & UPPER

MEMBER F.D.I.C.

Visit the Downtown Drive-In . . .
On West Short between Upper & Limestone
OPEN DAILY 7:30-6:00
SATURDAY FROM 7:30 'TIL NOON

59.8%

12 MONTH GAIN IN DEPOSITS

CENTRAL BANK LEADS THE WAY IN PERCENTAGE GAIN IN DEPOSITS DURING THE PAST 12 MONTHS

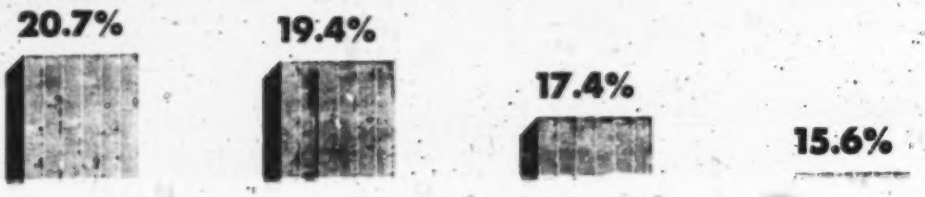
NEARLY 3 TIMES

THE PERCENTAGE GAIN OF ANY OTHER LEXINGTON BANK

In just 12 months, from June 30, 1962 to June 29, 1963, deposits at Central Bank and Trust Company have grown from $16,039,576.07 to $25,628,861.70 . . . . an increase of almost $10,000,000. We wish to take this opportunity to thank the people of Lexington and Fayette County for making this continuing growth possible.

If you are not enjoying the many benefits of banking at Lexington's "landmark of convenience," why not stop in soon and talk to one of the friendly people at the bank that's "Large enough to serve you . . . small enough to know you."

Percentages were computed by, and are on file at, Central Advertising Agency, Inc. using figures shown in the June 29, 1963 and June 30, 1962 published call reports of the banks indicated.



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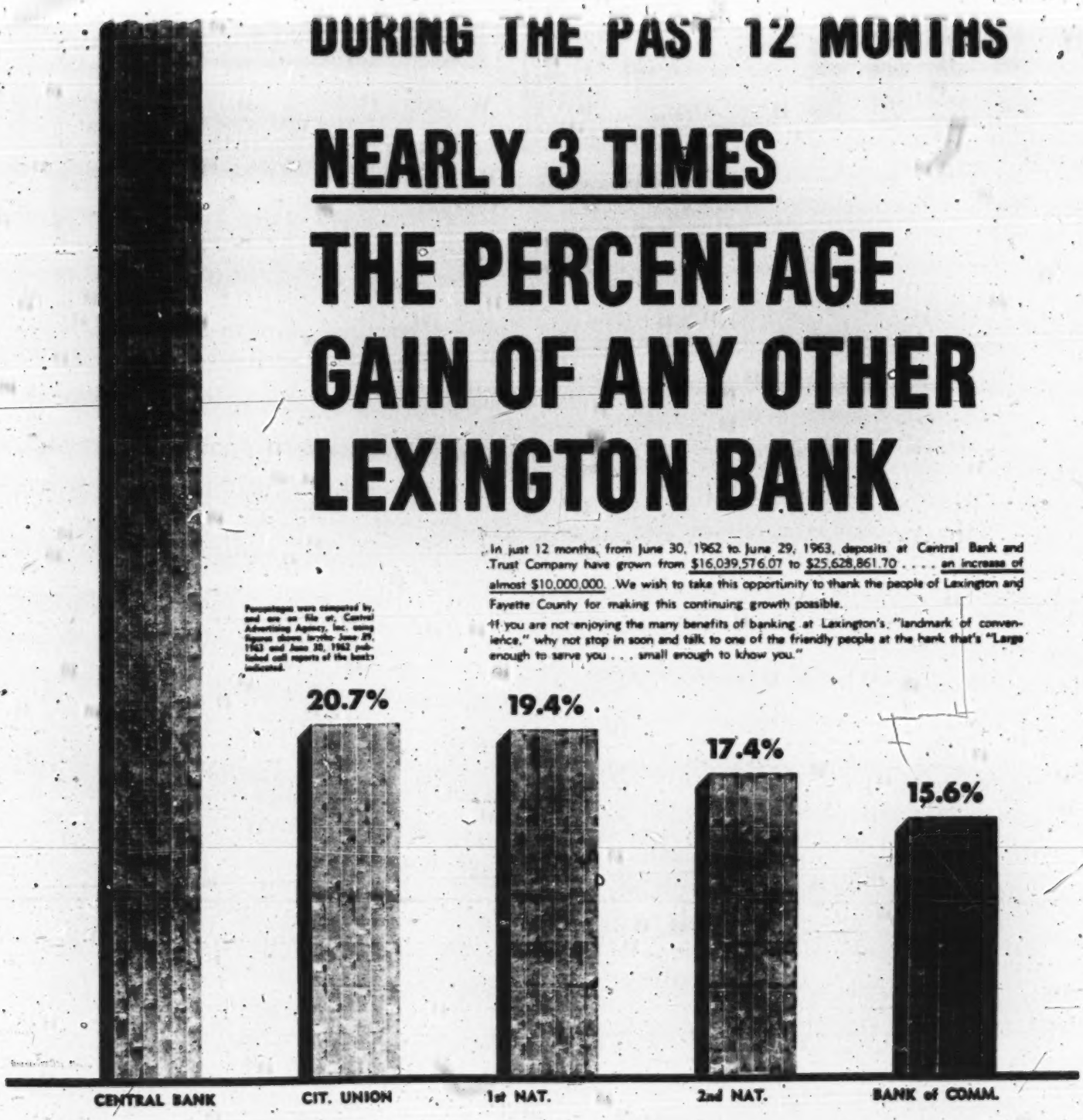


We have "Customer's Hours . . . not Banker's Hours"

Main Bank Open Daily 9 to 4 • Drive-In Open Daily 7:30 to 6

Both Offices Close At Noon On Saturday

Central

CORNER SHORT and UPPER

MEMBER F.D.I.C.

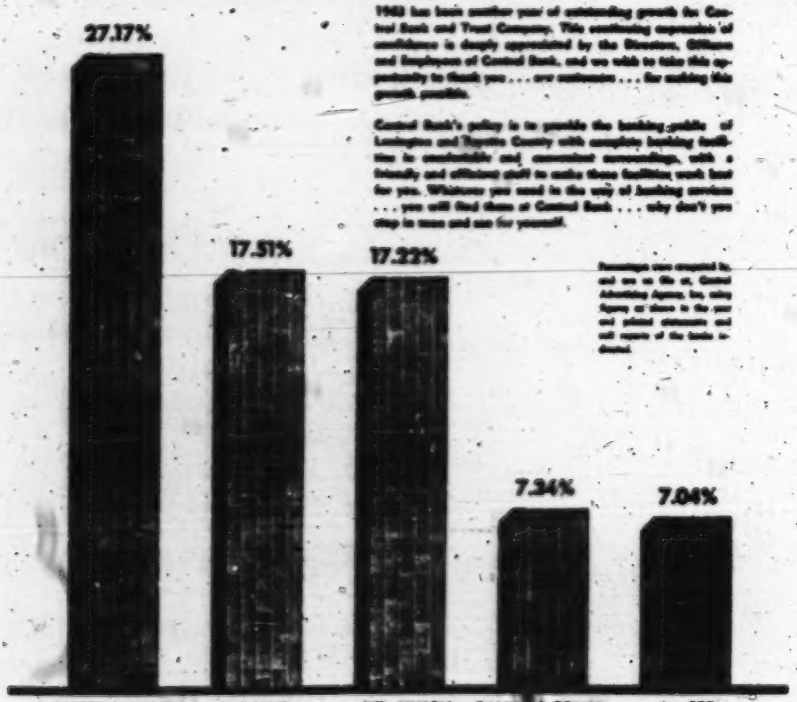
EXHIBIT "K"

EXHIBIT "L"

16 The Lexington Herald, Tuesday, January 28, 1964

Thanks Again...

FOR THE GREATEST PER CENT OF GROWTH IN DEPOSITS OF ANY LEXINGTON BANK— DURING 1963



1963 has been another year of outstanding growth for Central Bank and Trust Company. This continuing expression of confidence is deeply appreciated by the Directors, Officers and Employees of Central Bank, and we wish to take this opportunity to thank you . . . our customers . . . for making this growth possible.

Central Bank's policy is to provide the banking public of Lexington and Fayette County with complete banking facilities in comfortable and convenient surroundings, with a friendly and efficient staff to make these facilities work best for you. Whatever you need in the way of banking services . . . you will find them at Central Bank . . . why don't you stop in soon and see for yourself.

Percentages were computed by and are on file at, Central Advertising Agency, Inc. using figures as shown in the year end printed statements and call reports of the banks involved.

ALL DEPOSITS INSURED TO $10,000.00 BY THE FEDERAL DEPOSIT INSURANCE CORPORATION

Central

We have "Customers' Hours . . . not Bankers' Hours"

Main Bank Open Daily 9 to 4

Drive-In Open Daily 7:30 to 6

Corner Short and Upper — Member F.D.I.C. — Both Offices Close At Noon On Saturday

EXHIBIT "M"

(Herald 9-5-63)

Big Industrial Growth Is Seen For Lexington

Metropolitan Lexington's economy is poised for an era of industrial expansion, prompted by forces so strong they will change Lexington's policy of selecting, limiting and retarding the industrial growth of the community.

This statement was made yesterday by Robert Gold of Hammer & Co., in a report to the City-County Planning Commission on his company's economic base study of Lexington, Fayette County and its six contiguous counties.

Stating he didn't want to minimize Chamber of Commerce efforts which have, by a policy of selective growth, sought to avoid concentrating jobs in one sector of the economy, to avoid the unemployment that has hit so many communities because of automation and to maintain a "healthy economy."

"But we question whether the community can pursue this policy," Gold stated, asserting that "the forces at work are so powerful we wonder why it took so long for so few factories to come in."

The desirability of Lexington as a location for industries is already well known, Gold said. Lexington is underdeveloped industrially, and its location with respect to markets, plus the "horse farm tradition and other amenities of living in Lexington"—all indicate opportunities for future manufacturing growth are much greater than previously experienced, he pointed out.

Plants already here have a potential for expansion, he added.

Future Set

Pointing out that the basic pattern for a mass urban-industrial population is already established here, he said it is possible that some plants may tie into the Ohio waterway complex, with Louisville, Lexington and Cincinnati forming a triangle of metropolitan areas.

At Lexington's present stage of economic development, the question is not whether there will or will not be industrial development, the issue is one of accommodating economic growth, of taking any steps necessary to assure a harmonious and compatible arrangement of land uses and an adequate range and level of public facilities and services at reasonable costs, Gold told the group.

The preliminary report draft commented that the horse farms "are a part of a period of Kentucky history which has all but disappeared in other ways . . . we think they can remain in a changing economy if they (horse farmers) make the required adjustment and if they can resist the economic pressure for land from urban-type users."

A Job Provider

Lexington, Gold said, will continue to function as a regional services center and a cultural center; but the changing economy has placed Lexington in the category of a major job provider.

Gold termed the industrial growth of Lexington and the entire area since the war "an industrial revolution." Since 1950, he said, few areas in the U. S. can show as favorable record of growth economy. The entire area (Fayette and six adjacent counties) has shown a decline in agriculture but an increase in population due to manufacturing. Agriculture is playing an increasingly smaller role in Fayette, he noted.

Per capita income here, Gold said, was "near the U. S. average" in 1960 and in 1962. However, he said, Lexington's per capita income gains were less than those in the country's metropolitan areas during that period, but Lexington's performance was far better than most of the South.

Gold reported that, with industrialization and population growth in the outlying counties, these counties had "developed retail facilities and no longer rely on Lexington so much."

Gold termed much of the downtown area in Lexington as visually and functionally obsolete. During the 1950-1962 period, "Lexington got its share of trade that occurred in the county, but a declining share of the growth outside the county," he said.

He estimated that if the "trade sector" had kept pace with the regional growth, the trade sector's share would have doubled.

'Not Able To Serve'

The economic survey specialist also stated he did not believe the decline of the central business area has been a necessary one. "Physically and functionally, it was no longer able to serve . . . it was too old . . . some modernization has been accomplished, but it has been piecemeal . . . it's a matter of design."

The central business area is of economic importance if the over-all economy is to be developed, Gold reported, and he recommended the development of a downtown plan based on physical and economic analysis.

Gold reported that on the basis of past and present growth, Lexington's metropolitan population of 150,000 in 1960 could reach 187,000 by 1970 and 230,000 by 1980; but with full support of the economy and the realization of opportunities the population would reach 170,000 by 1970 and 208,000 by 1980.

Forecast for total personal income, which was $287 million in 1962, is $518 million in 1970 and $932 million by 1980.

Population growth in the area has held to normal increase and about half the total population gain has been from immigration.

Between 1950 and 1962, the economic well being of the average person living in Lexington increased by 25 per cent, Gold said. Total personal income "which sets the demand" for retail business, made a substantial growth, 134 per cent, he added.

Alvin Lewis, advance planner for Lexington and Fayette County, introduced Gold and prefaced various sections of the latter's report with explanations of statistical and background materials and theories.

EXHIBIT "N"

Lyle L. Jones
Antitrust Division, Department of Justice
969 Flood Building
870 Market Street
San Francisco, California 94102
Klondike 2-2350

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

Civil Action No. 41808

Filed:

UNITED STATES OF AMERICA, *Plaintiff*,

v.

CROCKER-ANGLO NATIONAL BANK, CITIZENS NATIONAL BANK, and TRANSAMERICA CORPORATION, *Defendants*.

Affidavit of Larry L. Williams in Support of Plaintiff's Motion for Preliminary Injunction

---

WASHINGTON, D. C.
DISTRICT OF COLUMBIA, ss.

LARRY L. WILLIAMS, being duly sworn, deposes and says:

I am an attorney in the Antitrust Division, Department of Justice, and occupy the position of Second Assistant to the Assistant Attorney General in charge of the Antitrust Division. During the past five years I have been actively involved directly or in a supervisory capacity with all the bank merger cases filed by the Department as

well as requests for clearance under the Division's clearance procedure and the submission of reports on the competitive factors involved to the bank regulatory agencies pursuant to the provisions of the Bank Merger Act of 1960.

This affidavit is filed in support of the Government's request for a preliminary injunction in this action and is intended to show why effective relief may not be had unless the merger in question is enjoined, pending a hearing on the merits of the complaint. I shall first discuss the history of governmental litigation in the bank merger field and the relief problems that have arisen in that litigation. Finally, I shall point out the specific difficulties that may be expected to arise in this case if a temporary injunction is not granted.

The first suit brought by the Department under Section 7 of the Clayton Act against banks seeking to merge was its suit against a bank holding company, Firstamerica Corporation (now Western Bancorporation) on March 30, 1959. Before 1960 the Department took the position that all statutory consolidations of national banks, such as the merger here involved, were not stock acquisitions within the meaning of Section 7 of the Clayton Act. After the Bank Merger Act of 1960 was passed, the Department re-examined its position and concluded that such mergers were, at least in part, stock acquisitions and therefore subject to Section 7. On February 25, 1961, the Department expressed this position for the first time publicly when it moved to enjoin the merger prohibited by the Supreme Court in *The Philadelphia National Bank* case last term. The prior suit against Firstamerica involved an acquisition by a bank holding company of stock in a bank competing with a bank owned by the holding company. This suit resulted in the creation of the First Western Bank and Trust Company, one of the so-called state-wide systems. This was the only suit brought by

the Department in the bank merger or acquisition field prior to 1960, but the Federal Reserve Board had previously sought to enforce Section 7 of the Clayton Act against defendant Transamerica Corporation, in a suit finally decided by the Third Circuit in 1953. *Transamerica Corp.* v. *Board of Governors of Federal Reserve System*, 206 F. (2d) 163, cert. den. 346 U.S. 901.

For approximately the past ten years the Antitrust Division has had a publicly announced merger clearance procedure which has sometimes been applied to bank mergers. The essential elements of the procedure require firms contemplating merger to request in writing a letter of clearance from the Department. A prerequisite to clearance is the submission to the Division of all information which it desires to evaluate the effect of the merger on competition. After review of such information, the Division then advises the applicants in writing that the request is denied or that it does not intend to bring suit to prevent the merger if consummated. This clearance states that the position of the Division is based upon the information then available to it and does not affect its position if in the future it discovers other information not made available or conditions in affected industries change. The form in which such clearance is stated is substantially as follows:

> On the basis of the information submitted in this matter and the representations of the parties involved, the Department does not intend to take action to block the merger under the antitrust laws. It is understood however, that the Department reserves the right to take action in the future if other evidence or subsequent developments should warrant it.[1]

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[1] Letter of August 8, 1963, regarding a merger previously approved by the FDIC of two large mutual savings banks in New York City.

The most obvious subsequent development thought to warrant a suit is a further merger or acquisition. A case in point is the suit now pending against *First Bank Stock Corporation* in Milwaukee, Wisconsin. When the first two banks were acquired by that holding company, we advised the holding company that we did not intend to bring suit to block the acquisitions but were reserving the right to attack the acquisitions if further developments warranted suit. When a third bank was acquired, suit was instituted.

In a number of instances officials of the Division prior to 1960 advised officials of regulatory agencies and Members of Congress that it viewed proposed bank mergers as not being stock acquisitions and therefore not subject to Section 7. Among such situations was the San Francisco merger between Crocker First National Bank and Anglo California National Bank in 1956. In that case, pursuant to a telephone conversation between Comptroller of the Currency Gidney and the Assistant Attorney General in charge of the Antitrust Division, a copy of the Consolidation Agreement and data dealing with certain competitive aspects of the proposed consolidation was forwarded to the Antitrust Division prior to approval of the consolidation by the Comptroller. After review of the material an official in the Antitrust Division advised the Comptroller that the proposed consolidation was an asset consolidation and therefore the Department had no jurisdiction under Section 7 of the Clayton Act. The Comptroller advised that he also viewed the consolidation as an asset consolidation.

In 1960, the Bank Merger Act, by amending Section 1828(c) of the Federal Deposit Insurance Act, required approval of all bank mergers by one of the Federal bank regulatory agencies having jurisdiction over the resulting institution. Where the resulting bank is a national bank approval must be obtained from the Comptroller of the Currency. Where the resulting bank is a state bank which is a member of the Federal Reserve System, approval must

be obtained from the Federal Reserve Board. And where the resulting bank is an insured state bank not a member of the Federal Reserve System, approval must be obtained from the Federal Deposit Insurance Corporation. That Act also required the banking agencies to take into consideration the effect on competition as well as so-called banking considerations before approving mergers in the "public interest."

The Bank Merger Act reflected Congressional concern over the recent wave of bank mergers which had resulted in the disappearance of large numbers of independent banks and the resulting concentration of banking resources in the hands of fewer and larger banks.[2] The Act sought to make bank mergers more difficult by requiring each banking agency to consider the effect of each proposed merger on competition (including any tendency toward monopoly) and to obtain from the other two banking agencies and the Attorney General a report on the competitive factors. At the same time, the jurisdiction of the courts to decide the application of the antitrust laws to bank mergers was left intact. Thus, as the Supreme Court made clear in its *Philadelphia* decision, administrative approvals of mergers under the standards of the Bank Merger Act do not immunize them from attack under the antitrust laws.

Pursuant to the provisions of the Bank Merger Act, the Assistant Attorney General in charge of the Antitrust Division, submits reports to the banking agencies on the competitive factors involved, on behalf of the Attorney Gen-

[2] The reports of the committees considering the legislation pointed to the wave of mergers going on, many of which had been approved by the Comptroller of the Currency, and the fact that the Federal Reserve Board and the Department had together brought only two cases in the bank merger field. See H. R. Rep. No. 1416, 86th Cong., 2d Sess.; S. Rep. No. 196, 86th Cong., 1st Sess.

eral. These reports are principally based on information supplied in the application of the merging banks for administrative approval, copies of which are regularly forwarded to the Antitrust Division. These reports analyze the information supplied by the banks from the viewpoint of the probable effect the proposed merger will have on competition, i.e., adverse or not adverse and degrees thereof. They are not advisory opinions as to whether or not a merger violates the antitrust laws.

When Crocker-Anglo merged with both First National Bank of San Rafael and Bank of San Rafael in 1961 the Division concluded in its report to the Comptroller that:

> The merger of these three banks would eliminate from the banking scene in Marin County, California, the last two independent banks. Only branches of large California banks would thereafter compete within the service area; moreover, the three largest banks would then control nearly 99% of IPC deposits and loans and discounts. It would be another step in the elimination of all local banks in California. It would lessen existing and potential competition in Marin County and would further increase concentration in commercial banking within the State.[1]

In 1962 when Citizens proposed to merge with Glendora Commercial & Savings Bank, Glendora, the Division concluded in its report to the Comptroller:

> Citizens National Bank, Los Angeles, proposes to acquire by merger Glendora Commercial & Savings Bank, Glendora, California. Citizens is the fifth largest bank in the Los Angeles area. Glendora Commercial was organized in December 1957, and its total deposits have grown since that time from $124,000 to

[1] Report of the Department of Justice to the Comptroller of the Currency.

> $3,107,000. According to the Application the five largest banks in the Los Angeles area hold 89 per cent of deposits within the area. The proposed merger is another step in the continuing concentration of commercial banking in the Los Angeles area. This continuing concentration would appear to lead to a substantial lessening of competition.[4]

These are the only mergers of the defendant banks (other than the presently proposed merger) that have occurred since the passage of the Bank Merger Act of 1960 and are therefore the only ones on which a report was made by the Department to the Comptroller. The reports of the Federal Deposit Insurance Corporation in both instances were not adverse to these mergers, but the reports of the Federal Reserve Board explicitly supported in part the position taken by the Department as to the competitive aspects. The Board's analysis with respect to Crocker-Anglo's San Rafael acquisitions said:

> ... The proposed merger would eliminate the only two independent banks in the service area, and existing and potential competition between Bank of San Rafael and First National Bank in San Rafael on the one hand, and Crocker-Anglo National Bank on the other.[5]

Its conclusion as to Citizen's Glendora acquisition said:

> While this merger in itself would not have a serious adverse effect on competition, it does represent a continuance of an already heavy concentration of banking resources in California in a small number of very large banks operating wide-flung branch systems. As of

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[4] Report of the Department of Justice to the Comptroller of the Currency.

[5] Report by the Board of Governors of the Federal Reserve System to the Comptroller of the Currency.

December 31, 1960, seven California banks held 86 per cent of the total deposits of all banks in the State.*

The only action instituted by the Federal Reserve Board against acquisition of stock in banks by bank holding companies under Section 7 of the Clayton Act was its action against Transamerica Corporation. That action filed in 1948 charged Transamerica with having violated Section 7 in that for a number of years it and its predecessors had continuously and systematically acquired the stock of over 550 independent banks located in California and four other western states, with a competition restraining effect. In 1937 Transamerica held substantially all the stock of Bank of America, the world's largest bank, as well as substantially all of the stock in numerous other banks. Although Transamerica had begun a program of disposing of its interest in Bank of America to its own shareholders by 1948 its holdings in Bank of America then still represented 22.83% of its stock. In 1951 it held 17.66%. By October 20, 1952, Transamerica had sold all of its stock interest in Bank of America. Nevertheless, the Board found on March 27, 1952, that Transamerica still exercised effective control over Bank of America in spite of its then comparatively small stock interest. The Board also found that the Transamerica group controlled approximately 645 or 41% of all commercial banking offices in the five-state area comprised of Arizona, California, Washington, Oregon, and Nevada and that its acquisitions violated Section 7. On appeal to the Third Circuit Court of Appeals (206 F. 2d 163) that court reversed on the ground that the Board's own findings of fact as to the local nature of commercial banking markets were inconsistent with its allegations of restraint of competition in the five-state market.

The loss of the Transamerica case played a significant role in the passage by Congress of the Bank Holding Com-

* Report by the Board of Governors of the Federal Reserve System to the Comptroller of the Currency.

pany Act of 1956, designed to control and regulate the formation and expansion of bank holding companies. Following the passage of this Act and as a direct result thereof Transamerica created and transferred to Firstamerica Corporation most of its controlling stock interests in banks in a number of western states and distributed its stock in Firstamerica to the Transamerica stockholders. Transamerica continued to hold a direct stock interest in, among other banks, the defendant Citizens National Trust and Savings Bank of Los Angeles.

Firstamerica continued to acquire banks in California, and other states. In 1959 it obtained approval of the Federal Reserve Board to acquire over 80% of the stock of California Bank, a bank with offices only in the Los Angeles area, with the purpose of merging that bank with First Western Bank and Trust Company, a bank with a San Francisco home office, and 27 branches in the Los Angeles metropolitan area. The Department brought suit charging that the acquisition and agreement to merge violated both Section 7 of the Clayton Act and Section 1 of the Sherman Act. The merger was then voluntarily postponed pending a hearing on the merits. After an unsuccessful motion to dismiss the complaint settlement negotiations with the Department began. That action was finally settled on the basis of an understanding between Firstamerica and the Antitrust Division whereby California Bank could merge with First Western to form the present United California Bank but out of that merger a new First Western would be created to which the merged institution (now called United California Bank) would transfer about 65 offices with deposits of about $500,000,000. This was done simultaneously with the merger and the stock of the newly created state-wide system, First Western, was recently sold to Great America Corporation. Prior to the filing of this case the possibility of creating two more state-wide banking systems by a voluntary exchange of branches be-

tween Crocker-Anglo and Citizens was suggested by the Department but rejected by the banks.

Subsequent to the Firstamerica action and the passage of the Bank Merger Act of 1960, the Department of Justice has filed suits to enjoin the merger of banks in Philadelphia,[7] New York,[8] Chicago,[9] Lexington, Kentucky,[10] Hammond, Indiana,[11] and the present action. In addition the Department has charged the acquisition of controlling stock interest by a Bank Holding Company in Milwaukee,[12] in three banks, and the indirect control of the third largest bank in Arizona by the largest bank in Arizona violate Section 7 of the Clayton Act.[13] In each of the bank merger suits, the Department sought to enjoin the consummation of the mergers pending determination of the actions on the merits. In the *Philadelphia* case, as in the *Firstamerica* case, consummation of the contemplated mergers were voluntarily held up pending disposition of the cases on the merits. In the *New York* and *Lexington* cases, the banks, legally merged a few hours before the suits were filed. As a result, no motion for even a temporary restraining order could be heard. In the *Chicago* case, the banks pleaded that they had completed numerous physical steps in preparation for the merger of such magnitude, that enjoining the merger then would create great hardship to the banks. In the recent *Hammond* case, the

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[7] United States v. The Philadelphia National Bank, et al.

[8] United States v. Manufacturers Hanover Trust Co.

[9] United States v. Continental Illinois National Bank & Trust Company of Chicago, et al.

[10] United States v. First National Bank and Trust Company of Lexington, et al.

[11] United States v. Calumet National Bank of Hammond, et al.

[12] United States v. Bank Stock Corporation of Milwaukee.

[13] United States v. Valley National Bank, et al.

Court forbade the banks to merge pending a hearing on our motion for a preliminary injunction set for November 11, 1963. In the *Lexington* case, the trial court ordered the banks to maintain separate records to the extent possible even though the banks had legally merged. In the *New York* case, the trial was expedited and the case is presently under advisement in the District Court.

In these cases, where the merging banks have merged before a temporary restraining order or temporary injunction could issue, serious problems, insoluble by any divestiture decree, may have been created. Even attempts made in good faith to keep separate the properties and accounts of merged banks pending a final decision on the merits of a challenged merger, cannot avoid extreme inconvenience to innocent parties.

Banking is unlike a commercial or industrial business where assets, factories or divisions may be split off without great harm to the corporate body. It is basically a service business where various functions and services are intertwined. A commercial bank owes, not owns its inventory, i.e., deposits. Confidence in the ability and capability of a banking firm to render a cluster of services to its customers is vital to its operations. Confidence and stability, priceless ingredients, may be destroyed or seriously impaired during the uncertainties of divestiture proceedings.

The following questions, among others, have been raised by bankers and their counsel in connection with the Department's litigation in this field. Can a Federal Court by decree force the State or the Comptroller of the Currency to grant a charter to the bank created by divestiture? Can a Federal Court compel a bank to transfer loan accounts or capital to a reconstituted bank? Can a Federal Court compel the transfer of a portion of the trust business of one bank to another? A Federal Court might be able to compel the resignation of one bank as a fiduciary, but can

it appoint a successor fiduciary? In the case of wills, testamentary trusts and irrevocable trusts, a bank could resign only after making a proper accounting in the appropriate state courts. But such state courts might choose not to appoint either the old or the newly created bank, following divestiture, as the successor fiduciary.

Moreover, operation problems would be very serious in a divestiture proceeding. Integration of persons, equipment and operational techniques would have to be unraveled. Officers of the merged bank would have to devote a larger part of their time in working out the divestiture and the future position of many would be in doubt.

All that can be said with certainty at this time is that no court has yet restored by a decree any competition suppressed by a bank merger.

In my opinion, the only way to avoid grave injury to non-parties is to enjoin this proposed merger pending a decision on its merits.

LARRY L. WILLIAMS
Larry L. Williams
Attorney, Department of Justice

Subscribed to and sworn before me this 14th day of October 1963.

EDGAR M. FORD

Notary Public, District of Columbia
My Commission Expires March 14, 1966

EXHIBIT "O"

Lyle L. Jones
Antitrust Division, Department of Justice
969 Flood Building
870 Market Street
San Francisco, California 94102
Klondike 2-2350

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

Civil Action No. 41808

Filed:

UNITED STATES OF AMERICA, *Plaintiff*,

v.

CROCKER-ANGLO NATIONAL BANK, CITIZENS NATIONAL BANK, and TRANSAMERICA CORPORATION, *Defendants*.

Supplemental Affidavit of Larry L. Williams

WASHINGTON, D. C.
DISTRICT OF COLUMBIA, ss.

LARRY L. WILLIAMS, being duly sworn, deposes and says:

This supplemental affidavit is filed in support of the Government's request for a preliminary injunction in this action and is intended to clarify and answer some of the matters raised in the Solomon affidavit and memorandum filed by defendants in opposition to the motion for a preliminary injunction.

At page 14 of his affidavit Mr. Solomon points to the cases pending in Chicago, New York City, and Lexington where divestiture is being sought and concludes that "it appears unreasonable for the Department of Justice to assert in the instant case that it cannot obtain this relief, particularly in view of the results in the *Firstamerica* case." Since he apparently lacks even second-hand knowledge of the specific divestiture problems faced by the Chicago, New York and Lexington banks his conclusion seems based on what his counsel here told him about the *Firstamerica* case. Presumably his counsel told him what they say at page 39 of their memorandum, that the Department of Justice, the Board of Governors of the Federal Reserve System and the FDIC "deemed the establishment of two additional statewide banking systems advisable in 1961," citing the *Firstamerica* case.

At page 34 of the memorandum in opposition to the motion it is stated: "But whatever the situation in banking may be elsewhere and whatever the situation may be in other industries the divestiture which the Government achieved and agreed to in *United States* v. *Firstamerica Corp.*, Civil No. 38139, N.D. Cal., establishes beyond contradiction that divestiture in the instant case is feasible and practicable if otherwise justified under the law and the facts."

Since the word court is conspicuously absent from the description of the authorities who combined to bring the alleged establishment about, it is difficult to understand how Mr. Solomon was led to his conclusion that this Court could do in this case what no court did in that case.

Moreover, it is inaccurate to say that two additional state-wide banking systems were created by any authorities in the *Firstamerica* case. One state-wide banking system was merged into a banking system operating only in the Los Angeles area and out of that merger two new banks were created that might be termed state-wide.

What happened was that the 27 branches operated in the Los Angeles area by Old First Western, in direct competition with California Bank, were placed in a new bank that could continue to compete with United California Bank in Los Angeles. The other branches that went into the new bank provided new competition to United California Bank in other areas of the State. Thus two new banks were created to replace two banks that existed before the merger and the area of competition between them was enlarged, without elimination of either one. As I pointed out in my original affidavit, a similar proposal was suggested to defense counsel as a basis of settlement of this action before it was filed but rejected.

Finally, in *Firstamerica* the banks did not attempt to merge before a hearing on the merits in contrast to the efforts of the defendants here and the settlement agreement was reached *before* the banks merged, *not after*. This settlement involved no judicial action except the approval of the Government's motion to dismiss the suit after the terms of the settlement agreement had been complied with. As Exhibit A to defendants' memorandum shows, the Department and Firstamerica recognized that action by the Federal Reserve Board would be required to carry out the various banking steps contemplated and the settlement was conditioned upon an approval of the terms of the settlement by the Federal Reserve Board, including the merger of California Bank and First Western and the formation of new First Western, which preceded dismissal of the suit.

The problems of divestiture in Firstamerica were, in any event, greatly aided by the fact that a bank holding company can more easily accomplish the task than a bank, such as would be the case here. The great harm attendant upon splitting up an existing bank was not present there for the banks did not merge before settlement was reached and approved by bank regulatory agencies.

To say that because divestiture is now being sought in other suits, divestiture is feasible is a non sequitur. The only certainty about that divestiture relief is that the longer those suits remain pending the harder the problems of divestiture will become. The uncertainties and hardships that Mr. Solomon asserts will occur if Crocker and Citizens cannot merge will only be compounded if they do merge and divestiture is ultimately ordered. The only way to avoid these uncertainties and injury to the banks, innocent third parties, and banking competition in California is to prevent this merger until a hearing on the merits can be had.

At pages 12-13 of his affidavit Mr. Solomon refers to Wells Fargo being recently permitted to acquire the State Center Bank which had six branches in Fresno County and says that "so far as I know no action against it has been taken by the Department of Justice." The Department opposed that merger in its report to the Federal Reserve Board on June 5, 1963. The last two paragraphs of our summary report states:

> Commercial banking in California is highly concentrated. The three largest California banks, alone, control 65.6% of total deposits, 66.8% of total loans and 59.6% of total banking offices. The nine largest have 91.1%, 92.0% and 81.5%, respectively. The expansionist pattern, through mergers and acquisitions, by large California banks has seriously increased concentration in California.
>
> It is our view that the proposed demise of the largest independent bank in Fresno County and the entry, in its place, of another state-wide bank would not only eliminate the competition presently existing between the participating banks, but may seriously endanger the remaining independent Fresno County banks. Against the background of the existing concentration of banking in California the merger may have an ad-

verse effect on existing and potential competition in Fresno County and in the State of California.

Thus, the Department of Justice has taken the consistent position, beginning with Firstamerica and continuing to date, that (1) California needs more state-wide commercial banks and (2) that it can and should have them without destroying existing or potential commercial banking competition.

LARRY L. WILLIAMS
Attorney, Department of Justice

Subscribed to and sworn before me this ___ day of ..... 1963.

Notary Public, District of Columbia